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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 PETER SCHAUB, et al.,

9 Plaintiffs,

10 v.

11 THE BANK OF NEW YORK
12 MELLON, as Trustee for First Horizon
Mortgage Pass-Through Certificates
Series FHAMS 2004-AA7, et al.,

13 Defendants.

C18-505 TSZ

MINUTE ORDER

14 The following Minute Order is made by direction of the Court, the Honorable
Thomas S. Zilly, United States District Judge:

15 (1) Plaintiffs' motion for remand, docket no. 14, is GRANTED. In their
16 Complaint, docket no. 1-1, plaintiffs plead three causes of action, all under state law,
17 namely (i) for violation of Washington's laws regarding mortgages, including the Deeds
18 of Trust Act, RCW Chapter 61.24, (ii) for violation of Washington's Consumer Loan
19 Act, RCW Chapter 31.04, and/or Consumer Protection Act, RCW Chapter 19.86, and
20 (iii) for unjust enrichment. Although the Complaint references a federal regulation, *i.e.*,
21 12 C.F.R. § 1024.41, it does so only to identify a violation that forms the basis of
22 plaintiffs' claims under the Deeds of Trust Act, the Consumer Loan Act, and/or the
Consumer Protection Act. In opposing plaintiffs' motion for remand, defendant First
Horizon Home Loans, a division of First Tennessee Bank National Association ("First
Horizon") makes no assertion that a federal private right of action exists for failure to
comply with 12 C.F.R. § 1024.41. Moreover, although First Horizon accurately observes
that the Complaint mentions, under the heading "Additional Claims," both the Fair Debt
Collection Practices Act ("FDCPA") and the Real Estate Settlement Procedures Act

1 (“RESPA”), along with several state common law theories, including negligence, fraud,
2 misrepresentation, trespass, and breach of contract, the Complaint does not cite to any
3 particular provision of the FDCPA or RESPA or include the type of allegations necessary
4 to adequately plead a claim under either of those federal statutes. The Court concludes
5 that no federal-question basis for jurisdiction exists. No contention has been made that
6 the parties are completely diverse. Given the lack of subject matter jurisdiction, this case
7 is REMANDED to the King County Superior Court, effective fourteen (14) days after the
8 date of this Minute Order.

9 (2) The Court DECLINES to award costs, actual expenses, or attorney fees
10 under 28 U.S.C. § 1447(c).

11 (3) First Horizon’s motion to dismiss, docket no. 8, is STRICKEN without
12 prejudice to refiling after remand is effected.

13 (4) The Clerk is directed to send a copy of this Minute Order to all counsel of
14 record.

15 Dated this 5th day of July, 2018.

16 William M. McCool
17 Clerk

18 s/Karen Dews
19 Deputy Clerk